IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.933 OF 1993.

Maharashtra State Co-operative
Housing Finance Corporation
Ltd. : Petitioner.

versus

Sunder Prakash Co-operative
Housing Society Ltd. & ors. : Respondents.

Mr.Vijay Patil for the petitioner.

Mrs.S.A.Dhamale for Respondent Nos.21,22,24,25,27 31, 32,34 and 35.

None for Respondent No.27.

Respondent Nos. 1 to 20, 23, 26, 28 to 30 and 33 are deleted vide Addl.Registrar’s order dated

7.10.1996

CORAM : D.G.DESHPANDE, J.

DATED : November 06, 2006.

ORAL ORDER [IN CHAMBER] :-

1. This petition was dismissed by me on 16th October 2006 in default. But on 17th October 2006 on oral request it was restored to file and the arguments were heard.

2. Heard the advocates for the petitioner and the respondent. This petition is filed against Respondent No.1/society and its 34 members. It was dismissed against Respondent Nos. 1 to 20, 23, 26, 28 to 30 and 33 vide Addl.Registrar's order dated 7.10.1996. Therefore out of 35 respondents, the petition was dismissed against the society and 25 members.

3. The petitioner had filed a dispute before the Co-operative Court against the society and its 34 members for recovery of loan amount. Respondent No.1/society was the member of the

petitioner. Respondent Nos. 2 to 18 were the members of the Respondent No.1 and remaining respondents were occupying the flats in the building of respondent No.1 which was mortgaged against the funds borrowed from the petitioner/society as loan. According to the petitioner,, Respondent No.1 applied to the petitioner/society for a loan of Rs.1,53,000/- for construction of building. This loan application was allowed and the petitioner/corporation advanced aggregate amount of Rs.1,49,000/- in two instalments to the respondent No.1 i.e. First instalment of Rs.1,43,000/- was disbursed on execution of mortgage deed on 20.02.1968 and remaining amount of Rs.6,000/- was disbursed on 1.7.1968 on execution of a registered receipt. Indenture of mortgage deed was executed in favour of the petitioner. The amount was to be repaid with interest at the rate of 8% p.a. But the amounts were not paid and there were defaults of 43 instalments. Therefore the dispute came to be filed.

. Out of the 35 opponents/respondents, Respondent Nos. 1 to 18 were not personally

served but summons were published in news paper. Respondent Nos. 19 to 35 were served and they filed written statement. They contended that no cause of action was disclosed against them. The dispute was misconceived and no loan was disbursed and, the Respondent No.1/society had not made any application for loan. The genuineness of the mortgage deed was also challenged. The Co-operative Court framed issues in view of the different contentions raised. The parties adduced evidence. But the Court dismissed the dispute as the Petitioner/disputent failed to prove the case against the respondents/opponents. The main thing was that the petitioner/disputent did not produce any copy of the resolution passed by the Respondent No.1 for taking loan from the petitioner/disputent and for executing the mortgage deed, though there was a reference about the said resolution in the mortgage deed. The Co-operative Court, therefore, concluded that the loan was not sanctioned and appropriated for the purpose of construction of the society's building.

2. Thereafter this petitioner filed Appeal before the Co-operative Appellate Court Bombay

vide Appeal No.99 of 1990. Before the appellate court also the issues were same and the stand of the contesting respondents was that though the respondent No.1 was the registered society, it never functioned as co-operative society right from the beginning and no general body meeting of the respondent No.1 was held, no bank accounts were maintained; there was no managing committee of respondent NO.1 from the beginning; no minutes books were maintained for the purpose of business of respondent No.1 and, there was no audit of the accounts of respondent No.1.

3. Regarding taking of loan, the respondents contended that there was no resolution of the managing committee dated 15.2.1968 about raising of loan and the signatories of the mortgage deed were not authorised by respondent No.1 to execute the purported deed and there was no resolution to authorise them in that regard. The appellate court also upheld these contentions. Therefore, this is a case where two courts below, after minute and thread bare scrutiny of pleadings and evidence have given concurrent findings of facts against the petitioner. Even though the petitioner is the State or Maharashtra State

Co-operative Housing Finance Corporation Ltd, it did not have any material documents viz. the resolution of respondent No.1 to take loan and the resolution of the society to authorise the members to execute the mortgage deed. It is, therefore, clear that the petitioner has failed to make out any case and, consequently it dispute came to be dismissed so also the appeal filed by it.

4. The judgments of both the courts below are sound, legal and proper. No interference is called for. Hence the petition is dismissed.

[D.G.DESHPANDE, J.]